



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93982; File No. SR-BOX-2022-03]

**Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule on the BOX Options Market LLC (“BOX”) Facility**

January 14, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 12, 2022, BOX Exchange LLC (the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the BOX Options Fee Schedule at Section VI, Regulatory Fees to reflect adjustments to sub-section B. FINRA Fees and sub-section C. Registration and Continuing Education Fees.<sup>5</sup>

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> See Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (SR-FINRA-2020-032) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adjust FINRA Fees To Provide Sustainable Funding for FINRA’s Regulatory Mission). See also SR-FINRA-2021-034.

While changes to the fee schedule pursuant to this proposal will be effective upon filing, the Exchange has designated that the proposed annual Maintaining Qualifications Program (“MQP”) fee will be implemented on January 31, 2022<sup>6</sup> and the proposed revised fee for the Regulatory Element will be implemented on January 1, 2023.<sup>7</sup>

The text of the proposed changes is attached [sic] as Exhibit 5.

The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room and also on the Exchange’s Internet website at <http://boxexchange.com>.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

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<sup>6</sup> The Exchange notes that this proposed implementation date coincides with the date FINRA proposes to implement the MQP Fee, as eligible individuals can begin making their election to participate in the MQP on January 31, 2022. The annual MQP fee is set forth in proposed Section 4(f)(2) of Schedule A to the FINRA By-Laws. See SR-FINRA-2021-034. See also FINRA Rule 1240(c) (Continuing Education Program for Persons Maintaining Their Qualification Following the Termination of a Registration Category).

<sup>7</sup> The Exchange notes that this proposed implementation date coincides with the date FINRA has designated the proposed annual Regulatory Element fee to go into effect. FINRA has designated January 1, 2023 as the effective date of the transition to the annual Regulatory Element requirement. See SR-FINRA-2021-034. The Regulatory Element Fee is set forth in Section 4(f)(1) of Schedule A to the FINRA By-Laws. See SR-FINRA-2021-034. See also See also FINRA Rule 1240(a) (Regulatory Element).

The Exchange proposes to amend the Fee Schedule for trading on the BOX Options Market at Section VI.B. (FINRA Fees) and Section VI.C. (Registration and Continuing Education) to make clarifying changes to the section and reflect adjustments to FINRA Registration Fees.<sup>8</sup> The FINRA fees are collected and retained by FINRA via Web CRD for the registration of employees of BOX Participants that are not FINRA members (“Non-FINRA members”). The Exchange is merely listing these fees on its Pricing Schedule. The Exchange does not collect or retain these fees. Today, Sections VI.B. and VI.C., of the BOX Options Fee Schedule, provide a list of FINRA Web CRD Fees, Fingerprint Processing Fees, and Continuing Education Fees. The Exchange proposes to amend the introductory paragraph of Section VI.B. to add a sentence to make it clear that FINRA collects the fees listed within this section. The Exchange also proposes to add the heading, General Registration Fees, before the list of fees collected by FINRA. The fees listed within Section VI.B., reflect fees set by FINRA. Specifically, with respect to the General Registration Fees, the Exchange proposes to increase the \$100 fee to \$125 for each initial Form U4 filed for the registration of a representative or principal. This amendment is made in accordance with a recent FINRA rule change to adjust to its fees.<sup>9</sup> The Exchange is proposing additional technical and conforming amendments to the Fee Schedule, including updating the footnote numbering in Section VII, Billing, and Section VIII, Participant Fees.

The proposed rule change also makes non-substantive clarifying changes to certain provisions of the Fee Schedule at Section VI, Regulatory Fees, VI.B. (FINRA Fees) and VI.C. (Registration and Continuing Education). The Exchange proposes to add clarifying language to Section VI.B. Specifically, the Exchange is proposing to add footnote 26 to clarify that the

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<sup>8</sup> FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories of registered associated persons of broker-dealer.

<sup>9</sup> FINRA noted in its rule change that it was adjusting its fees to provide sustainable funding for FINRA’s regulatory mission. See Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (SR-FINRA-2020-032).

FINRA Web CRD Processing Fee is paid directly to FINRA for each initial Form U4 filed for the registration of a representative or principal. The Exchange is also proposing to adopt footnote 27, to make clear that the FINRA Disclosure Processing Fee is paid directly to FINRA for the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification of one of more disclosure events or proceedings. The Exchange proposes to add language to make it clear that the FINRA Annual System Processing Fee is assessed only during renewals and that the Fingerprinting Fees are processing fees.

The Exchange also proposes to amend Section VI.C., to reflect the current fees assessed by FINRA and add clarifying language to provide more transparency to the FINRA Fees listed within the BOX Fee Schedule. The Exchange proposes to decrease the \$55 fee per session to \$18 per session. This fee is assessed to each individual who completes the Regulatory Element of the Continuing Education requirements pursuant to FINRA rules. This amendment is made in accordance with a recent FINRA rule change to adjust to its fees.<sup>10</sup>

The Exchange proposes to remove the reference to the S101 within Section VI.C.2., the Continuing Education Fee and the corresponding footnote 29. This amendment will clarify that the Continuing Education Fees that FINRA assesses applies to each individual who is required to complete the Regulatory Element of the Continuing Education requirements. The Exchange also proposes to add clarifying language to footnote 28 to make it clear that the referenced \$120 fee to be paid to FINRA includes the fees for the Securities Industry Essentials Exam, and the Series 57 exam.

The Exchange proposes to add Section VI.C.3., Maintaining Qualifications Program Fee, to adopt the proposed annual MQP Fee of \$100. The Exchange also proposes to adopt footnote 30 to specify that the MQP Fee will be paid directly to FINRA and will be assessed annually to

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<sup>10</sup> See SR-FINRA-2021-034 (December 30, 2021). FINRA notes that the proposed \$18 annual fee is comparable to the current \$55 fee over a three-year period.

each individual electing to participate in the continuing education program under FINRA Rule 1240(c). This amendment is made in accordance with a recent FINRA rule change to adjust to its fees.<sup>11</sup>

The FINRA Web CRD Fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA.<sup>12</sup>

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,<sup>13</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes it is reasonable to increase the \$100 fee for each initial Form U4 filed for the registration of a representative or principal to \$125 in accordance with an adjustment

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<sup>11</sup> See SR-FINRA-2021-034 (December 30, 2021). FINRA notes that the proposed MQP is a voluntary program.

<sup>12</sup> The Exchange notes that other options exchanges have recently filed similar proposals to increase the fee from \$100 to \$125 for each initial Form U4 filed for the registration of a representative or principal in accordance with a recent FINRA rule change to adjust to its fees. See Securities Exchange Release No. 34-93582 (November 16, 2021), 86 FR 66373 (November 22, 2021) (SR-ISE-2021-24) (Notice of Filing and Immediate Effectiveness). See also Securities Exchange Release No. 34-93583 (November 16, 2021), 86 FR 66356 (November 22, 2021) (SR-GEMX-2021-10) (Notice of Filing and Immediate Effectiveness). See also Securities Exchange Release No. 34-93602 (November 17, 2021), 86 FR 66604 (November 23, 2021) (SR-NASDAQ-2021-087) (Notice of Filing and Immediate Effectiveness). See also Securities Exchange Release No. 34-93584 (November 16, 2021), 86 FR 66363 (November 22, 2021) (SR-MRX-2021-11) (Notice of Filing and Immediate Effectiveness). See also Securities Exchange Release No. 34-93587 (November 16, 2021), 86 FR 66375 (November 22, 2021) (SR-BX-2021-052) (Notice of Filing and Immediate Effectiveness). See also Securities Exchange Release No. 34-93577 (November 15, 2021), 86 FR 64976 (November 19, 2021) (SR-PHLX-2021-68) (Notice of Filing and Immediate Effectiveness).

<sup>13</sup> 15 U.S.C. 78f(b)(4) and (5).

to FINRA's fees.<sup>14</sup> The Exchange's rule text will reflect the current registration rate that will be assessed by FINRA as of January 2, 2022. Additionally, adding language that makes it clear that FINRA will bill and collect these general registration fees will bring greater transparency to the FINRA fees as listed within the BOX Fee Schedule. The Exchange believes it is reasonable to decrease the \$55 per session fee to \$18 per session in accordance with a recent FINRA rule change to adjust to its fees.<sup>15</sup> Also, amending the Continuing Education Fees to remove the reference to the S101 will bring greater clarity to the Continuing Education fees currently assessed by FINRA and listed within the BOX Fee Schedule. Noting that the fees are paid directly to FINRA and the addition of the other proposed clarifying changes will provide more information to Participants regarding the fees for Continuing Education. The Exchange also believes it is reasonable to add Section VI.C.3. to list the proposed MQP Fee of \$100 in accordance with a recent FINRA rule change to adjust to its fees.<sup>16</sup> Finally, making clear that the FINRA Annual System Processing Fee is assessed only during renewals, the Fingerprinting Fees are processing fees, and that Series 57 Exam fee includes the fee for the Securities Industry Essentials Exam, will provide greater transparency regarding the fees collected by FINRA and listed in the BOX Fee Schedule. The proposed fees are identical to those adopted by FINRA for use of Web CRD for disclosure and the registration of FINRA members and their associated persons. These costs are borne by FINRA when a Non-FINRA member uses Web CRD.

The Exchange believes that its proposal to increase the \$100 fee for each initial Form U4 filed for the registration of a representative or principal to \$125 is equitable and not unfairly discriminatory as the amendment will reflect the current fee that will be assessed by FINRA to all Participants who require Form U4 filings as of January 2, 2022. The Exchange also believes that its proposal to decrease the Continuing Education fee from \$55 per session to \$18 per

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<sup>14</sup> See supra note 5.

<sup>15</sup> See supra note 10.

<sup>16</sup> See supra note 11.

session is not unfairly discriminatory as the amendment will reflect the current fee that will be assessed by FINRA to all Participants who complete the Regulatory Element of the Continuing Education requirements pursuant to FINRA rules. Additionally, reflecting the current Continuing Education Fees for the S101 or S201 is equitable and not unfairly discriminatory as FINRA currently assesses these rates to all Participants that are required to have those registrations. The Exchange also believes that its proposal to list the MQP Fee of \$100 is not unfairly discriminatory as the amendment will reflect the annual fee that will be assessed by FINRA to all Participants who elect to participate in the MQP pursuant to FINRA rules. Finally, making clear that FINRA will bill and collect these fees will bring greater transparency to FINRA's fees as listed within the BOX Fee Schedule. Further, the proposal is also equitable and not unfairly discriminatory because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that this proposal creates an unnecessary or inappropriate inter-market burden on competition as FINRA's fees apply to all market participants. Additionally, the Exchange does not believe that this proposal creates an unnecessary or inappropriate intra-market burden on competition as the increased fee for each initial Form U4 filed for the registration of a representative or principal will be assessed by FINRA to all Participants who require Form U4 filings as of January 2, 2022.

The Exchange does not believe that this proposal creates an unnecessary or inappropriate intra-market burden on competition as the decreased Continuing Education fee from will be assessed by FINRA to all Participants who complete the Regulatory Element of the Continuing Education requirements pursuant to FINRA rules. Also, clarifying that the Continuing Education

Fees apply to all individual required to complete the Regulatory Element of the Continuing Education requirements does not impose an undue burden on competition as FINRA currently assesses these rates to all Participants that are required to have those registrations. The Exchange also does not believe that its proposal to list the proposed annual MQP Fee of \$100 creates an unnecessary or inappropriate intra-market burden on competition as this annual fee that will be assessed by FINRA to all Participants who elect to participate in the MQP pursuant to FINRA rules. Additionally, making clear that FINRA will bill and collect these fees will bring greater transparency to the FINRA fees listed within the BOX Fee Schedule. Finally, clarifying that the FINRA Annual System Processing Fee is assessed only during renewals, the Fingerprinting Fees are processing fees, and that Series 57 exam fee includes the fee for the Securities Industry Essentials Exam, will provide more information to Participants regarding the fees collected by FINRA and listed within the BOX Fee Schedule. Further, the proposal does not impose an undue burden on competition because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action Effectiveness

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act<sup>17</sup> and Rule 19b-4(f)(2) thereunder,<sup>18</sup> because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>18</sup> 17 CFR 240.19b-4(f)(2).

otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2022-03 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BOX-2022-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BOX-2022-03 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>19</sup> 17 CFR 200.30-3(a)(12).